SENATE . . . . No. 265.

Commonwealth of Massachusetts.

MINORITY REPORT.

The subscribers, members of the Committee on Harbors and Public Lands, to which certain petitions and remonstrances relative to legislation in regard to the Cape Cod Ship Canal Company were referred, submit the following

REPORT:

The Cape Cod Ship Canal Company was incorporated by chapter 259 of the Acts of 1883, which provided that the railroad location crossed by the canal should not be changed until the canal company had given to the railroad company such security for the damages by the change as the railroad commissioners might prescribe, and also provided for a railroad and highway bridge across the canal, protected by locks or otherwise, to the satisfaction of the railroad commissioners.

The corporation organized by the choice of directors and officers, but no corporator named in the charter and no director or officer of the canal company has ever subscribed for any of its capital stock, or paid anything whatever towards the business of the company. The charter provided that at least twenty-five thousand dollars should be expended in the actual construction of the canal within four months, *i.e.*, by the twenty-sixth day of October, 1883, but nothing

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was done towards the construction of the canal until the ninth day of October, when one Frederic A. Lockwood executed a contract with the canal company, a copy of which is annexed to this report. We invite careful attention to the provisions of this remarkable contract, which are in substance, — That Lockwood should build the canal, or so much of it as is covered by the specifications annexed to the contract, for the sum of seven and one-half millions of dollars (*i.e.*, $1,000,000 for every mile of canal), and a reasonable price for any extra work; that Lockwood should subscribe for all the stock of the corporation, to be issued to him from time to time to such amounts as might be due him under his contract, and the amounts due from the company under the contract should be set off against the amounts due from the contractor on account of his subscription to the stock, and that when the $5,000,000 of capital should be thus absorbed, the company should issue its bonds to be purchased by the contractor, to such an amount not exceeding $5,000,000, as might be required to pay the balance of the contract price, and for any additional work done by him, and that the amounts due from him for the bonds should be set off against amounts due to him for such work. Lockwood testified before the committee that the special reason for making the contract price what it was, was not that it was thought it would cost that amount to construct it, but that the price might cover all the securities of the company; and he claimed that, as he was not only the contractor but the sole stockholder, it was nobody's business what price he received in the securities of the company for the construction of the canal. On the 19th of October, Lockwood, the contractor, in pursuance of his contract, subscribed for the whole amount of the capital stock of the canal company, which had been previously fixed at $5,000,000, the maximum amount allowed by the charter, and agreed to pay for it, not in cash, but "as per terms of contract," *i.e.*, in constructing the canal at a price fixed without reference to what the actual cost might be. On the same day the corporation voted that each share of the capital stock be assessed fifty cents, and on the 26th of October, Lockwood gave to the company in payment of this assessment, which amounted to $25,000, his check for

$20,000 and $5,000 in money; and at the same time as a part of the same transaction received back the check and the money in part payment upon his contract. By this process Lockwood practically contracts with himself to build the canal at a price fixed by himself, for the purpose of covering the whole amount of the securities which the company is entitled to issue without reference to what the canal may actually cost.

If this scheme be carried out, the stock and bonds of the canal company, issued under the authority of the Commonwealth, and on which the public must pay interest and dividends, will represent, not what they should represent, the fair cost of the work for which they are issued, but an arbitrary price fixed by the contractor, who is also the sole stockholder, and thus practically upon both sides of the bargain contracting really with himself.

Such a course of proceedings, which is the worst form of stock-watering, has never before, we believe, been attempted by any corporation organized under the laws of Massachusetts.

We believe it was the intention of the legislature, when it granted the charter to this company, to provide that its organization and proceedings should be under the wise provisions of the general law regulating the subscription for, and payment of, stock in railroads, street railways and other corporations, whereby the amount of stock and bonds to be issued is controlled by the fair cost of the work to be done.

We also believe that it was their intention to provide that the corporation should be subject to the provisions of the general law with relation to the assessment, security for and collection of damages for land and materials taken by the right of eminent domain, which apply to railroads and other corporations authorized to take land for public purposes; and if it is not subject to these provisions now, we believe it should be made subject to them, or that any doubt upon that point should be removed by specific legislation before its request for additional privileges is granted. We think it would be an injury to the public and a discredit to the Commonwealth, if the legislature, having the matter brought to their attention, as it now is, shall permit this corporation, —

which has taken, and desires the authority to take, by the right of eminent domain, more land than was ever before taken by a single corporation in Massachusetts, and which it expects to ask the general government to expend millions of dollars for approaches and other works necessary to make the canal available, — to issue its stock and securities except upon the basis of the fair cost of the work which they represent. It ought not to be permitted, in our judgment, to go on with one stockholder, who is also the sole contractor, without sureties, bargaining with himself for the construction of the canal at such prices as he may see fit to fix, for the purpose of covering all the securities which the corporation is by law authorized to issue. If this is to be permitted, we desire to be on record at all times as objecting to it and protesting against it.

Lockwood testified that he should not have become interested in the canal if he had not been interested in a new kind of dredger, which he was constructing before the charter of the canal company was obtained, and it was evident to us that the construction of the canal by him really depends wholly upon the success of this dredger. He testified that he never should have gone into the canal at all if he had not had the dredger. The dredger was not completed at the time of the hearing before the committee, and no evidence has been submitted to us of its practical workings or operation. It also appeared from the testimony of Lockwood that he had made no plans for the construction of the canal and the bridges and other structures connected with it, and no estimate of their cost, and that no such plans or estimates had been made by anybody for him or for the company; that he had not considered the question as to how the canal was to be operated after it was constructed, nor had he considered or calculated the revenue which could probably be derived from it. It did appear, however, that about 8,000,000 cubic yards of excavation will be required in the construction of the canal, and a competent witness called by the contractor testified that it could be done for fifteen cents a yard or less, with the present appliances. This would cost about $1,200,000. Lockwood testified that he thought the construction of the bridge and ferries and

other structures required by the contract, according to his ideas, would not exceed $250,000, thus showing that to do what he, by the contract, considers himself bound to do, will not cost over $1,500,000, or one-fifth of his contract price.

The length of the canal is between seven and eight miles. It is conceded that there is an extreme difference of about fourteen feet between the tides at either end, *i. e.*, in Buzzard's Bay and in Barnstable Bay, and it is obvious that in the construction of such a work it is extreme differences which are to be provided for.

For more than a hundred years the question of the construction of this canal has been considered by the ablest engineers in the United States, including, among others, George R. Baldwin, Gen. Joseph G. Totten, Prof. A. D. Bache of the United States Coast Survey, James B. Francis and Alexander Greene, and all who have actually examined it have, without exception, decided that this difference of tide could be controlled and the construction of the canal made safe only by the use of locks or equivalent tide gates. It was the undisputed testimony before us of perhaps the ablest hydraulic engineer in Massachusetts, that if the canal were constructed unprotected by locks, or the currents not properly controlled, one heavy tide would do a large amount of damage, and at every additional high tide there would be an additional effect produced, and that the consequences and extent of the damage produced could hardly be forecast or estimated. It seems to us that a work of such magnitude, of such an experimental character, and from the improper conduct of which such great and extensive damage would doubtless result to the property of others, ought to be under the supervision of the harbor and land commissioners; and upon this point we concur with the bill reported by the majority of the committee.

But also think that it is not wise to repeal that provision of the charter of the canal company which provides that the railroad bridge shall be protected by locks or other structures to the satisfaction of the railroad commissioners. We believe it is better to leave all questions relating to the construction of the canal and the railroad bridges and other

structures connected with it to the decision of the railroad commissioners, or the harbor and land commissioners, tribunals established by general laws for the purpose of passing upon questions of this character, than it is to constitute an independent tribunal for the special purpose of passing upon a particular question which arises in the prosecution of a public work. But, if such a tribunal is to be established for the purpose of deciding whether locks are necessary in the construction of the railroad bridge and the canal, we are clearly of the opinion that it should be the duty of the canal company to obtain the opinion of this tribunal upon that question *before* it attempts to construct the canal without locks, and we also think that this tribunal should give a public hearing before it finally decides the question. Neither of these matters ought, we think, to be left in doubt.

On the 12th of October the canal company filed a location one thousand feet wide from Barnstable Bay to Buzzard's Bay, by which it took over nine hundred acres of land, including over five miles of the present location of the railroad. October 26th the railroad company and the canal company agreed upon the point of the crossing of the railroad and the canal, and on October 30th the canal company applied to the railroad commissioners to fix the security to be given by it before the railroad company should change its location. This application is still pending before the commissioners.

There had been paid by the company on account of its land damages, at the time of the hearing, about $4,000, and it was not shown to us that the company had any property belonging to it, except the land for which this sum had been paid, and a partially constructed wharf near Barnstable Bay.

The company did not deposit with the treasurer of the Commonwealth $200,000 in money as required by its charter; but there was deposited, on the day of October, by the contractor, in behalf of the company, with the State treasurer, $200,000 of coupon government bonds, which Lockwood testifies were furnished him by a Mr. Shaw, under a contract which Lockwood declined to produce, or exhibit to the committee, although requested by them to do so. No surety was furnished by the contractor upon his contract for building the canal, and the evidence before the

committee tended to show that the contractor has not himself any considerable personal means or property. In fact, it appeared, and was not denied by him, that substantially all his property, except some $6,000 worth, was pledged for debts.

It has been held, as we understand, by the courts, that, under the charter, the canal company is not within the provisions of the general railroad law, which require plans and estimates to be submitted to the railroad commissioners, and subscription by responsible parties to be made to its stock, before it can locate upon or take property by the right of eminent domain; and no subscription to its capital stock has been made, except the subscription by the contractor, to be paid by work under his contract. This contract, as will be seen upon examination of it, is based upon the location of the canal company made in October, 1883. If that location is changed, as the canal company now asks the legislature to authorize, it would seem clear that the contract under which the subscription to the capital stock was made, and by the performance of which the subscription is to be paid, must fail. So that, upon a change of location, there would be really no subscription to the capital stock, and the company would stand without any assets or property whatever, except the small amount of land which it has purchased for its right of way at the expense of a very few thousand dollars, and which is practically worthless for any other purpose.

No director or officer of the canal company appeared before the committee, and it is conceded that nobody has any interest in the corporation except the contractor, Lockwood, who now asks, in the name of the company, — to the stock of which he is the sole subscriber, under the contract above stated,—that the provision of the charter giving to the railroad company such security as the railroad commissioners may decide to be proper, before it is compelled to abandon its present location, and make itself liable to damages by locating over other lands, shall be repealed, and the railroad company compelled to do this without any security whatever. He also asks that the location filed in October may be abandoned, and a new location filed, by which the

canal will cross both branches of the railroad; that is to say, the line of the road to Provincetown, called the Cape line, and the line to Wood's Holl, called the Wood's Holl branch, in such a way as to materially lengthen one or both of said lines. And he asks that the question of the construction and protection of the railroad bridge, which is now pending before the railroad commissioners, under the provisions of the charter, and upon the petition of the canal company, be taken from the railroad commissioners, and submitted to a tribunal of three engineers, to be appointed by the governor and council; and also that the provision of the charter for a highway bridge be repealed, and the only crossing of the canal be a single railroad bridge, and ferries for highway travel; and asks, in addition to this, that the organization of the company be ratified, approved and confirmed by the legislature. The railroad company and the canal company agreed in October upon the point of crossing of the canal and the railroad upon the location then filed by the canal company; and a crossing at the point thus agreed upon would not substantially lengthen either line of the railroad. But if the new location asked for by the canal company be granted, the length of the line to the Cape will be increased about two miles, unless the canal company is required to maintain a suitable bridge for the crossing of each branch of the railroad, which we think should be done. It appeared before the committee that during the last year 121,656 passengers were carried over the Cape line of the railroad, and 63,350 over the Wood's Holl branch, at the proposed crossings of the canal.

If this travel continues to increase as it has in the past, which we see no reason to doubt, in less than ten years there will be carried over these two lines of railroad more than three hundred thousand passengers annually. The total tonnage over the railroad last year was about sixty thousand tons, and if it increases for the future as it has in the past, in less than ten years there will be over eighty thousand tons of freight annually carried over the proposed crossings of the canal. It appeared in evidence before the committee that if the new location is permitted, and the railroad is required to change its location, so as to cross the canal but

once with both branches of its road, there would be an addition to the train mileage of the railroad of between six and seven thousand miles each year, entailing an additional expense in this item alone of over seven thousand dollars a year to the public. A suitable draw-bridge could probably be constructed for less than fifty thousand dollars; and we do not think that the burden of such a bridge upon the artificial channel to be opened by the construction of the canal is to be compared with the inconvenience and expense which would necessarily be occasioned to the public of that part of the Commonwealth by lengthening the line of the railroad to the Cape for all time to come, as would be required if the locations were so changed as to cross the new location of the canal but once. Nor do we feel that the canal company and the railroad company should be permitted to agree that the line should be so lengthened. It is a matter of public convenience and expense for all time to come. The two lines of railroad are the only railroads by which the people of that part of the Commonwealth have, or can ever have, communication with the rest of the world; and we feel that their interests demand that no additional burden, caused by length of line or change of grades, should be placed upon their railway communication. The legislature has never hesitated to put draw-bridges across natural water ways, whenever the necessities of highway or railway travel required them. In this case, these highways and railways to be cut off by the canal have been constructed and operated for many years. The business community which these lines of railroad serve has adapted itself to their present location, and great damage and mischief would occur by changing or lengthening them. We do not think this ought to be done, to avoid the slight burden of a single additional bridge over the canal. The same reasons to a great degree seem to us to require that one of these bridges at least should be suitable for the passing of the highway, as is now provided in the charter of the canal company, and as has been provided in every charter ever given to a Cape Cod canal company. The highways to be cut off by this canal have existed for many years, some of them over a century. The people have settled upon them and adapted themselves and their business

to their present location. Their free and open use is necessary for the convenience and comfort of the people. To cut them off by an artificial water-way two hundred feet wide, to be crossed only by the uncertain means of a ferry, would, we think, be highly unjust. The people of that county have always insisted that the charters which have been granted for a canal should contain a provision for a highway crossing. We do not believe that they now, as a body, or to any considerable extent, understand that it is seriously proposed to cut off all their highways by a canal, without any bridge whatever. Many of those who did sign a petition for the ferry, signed it through a misapprehension, as we understand and believe. Some of them, who ascertained their mistake during the hearing, came before the committee and stated that they misapprehended the effect of the petition when they signed it. We think the interest of the general public, served by these highways, should be protected by giving one at least of them a crossing over the canal which cannot be broken by the interruption of a ferry.

We also believe that the canal company should be required to give security to land owners, to be fixed by the county commissioners upon application of the owner of land taken by it, before it is authorized to enter upon or use land taken by it, which, as we understand, it is not now required to do, but which it seems to us it must have been the intention of the legislature when the charter was granted to require it to do. In no case, we believe, is any corporation, other than a city or town, authorized to take land by the right of eminent domain without being required, if requested, to give security to pay the damages which may be awarded against it. In this very case, when the railroad company changes its location and makes a new one for the benefit of the canal company, as the act requires it to do, it will be liable, under the provisions of section 97 of chapter 112 of the Public Statutes, to give security to the land owner for such damages as may be awarded him, and we think the same provisions should be made specifically applicable to the canal company. It has been suggested, that inasmuch as the deposit with the state treasurer is made security for all damages to be incurred in the construction of the canal, no

special security should be required; but this fund is liable not only for all land damages, but for all obligations incurred by the company under the act, such as the maintaining of ferries, the construction of bridges, the building of highways and the construction of a new railroad, and also for all claims for labor performed or furnished, in the construction of the canal, and is, in our judgment, wholly inadequate to satisfy all these claims. Besides, this fund can be reached only by an expensive suit in equity in the supreme court, in which, as the law now stands, many difficult legal questions must arise; and if it should be insufficient, as we think it must be, to satisfy all the claims upon it, there could be only a *pro rata* application of it. We are clearly of the opinion that citizens of the Commonwealth, whose land is taken by this corporation against their consent, ought not to be compelled to resort to such a proceeding to recover their damages, but that they should have the same security which other corporations authorized to take land for public purposes are uniformly required to give.

We therefore recommend that section one of the bill reported by the majority be amended so as to provide for this security and read as follows:

Section 1. The Cape Cod Ship Canal Company, within six months from the passage of this act, may vary the location of its canal by altering the route thereof at or near Monument Station, so called, and thence extending the same to Buzzard's Bay through Back River, so called, and may make other changes in its location, as already filed, subject to the provisions of this section.

It shall pay all damages occasioned by laying out, making and maintaining its canal, or by taking land or materials therefor, and such damages on the application of either party shall be estimated by the county commissioners in the manner provided with reference to the laying out of railroads. Either party dissatisfied with the estimate of the county commissioners may, at any time within one year after it is completed and returned, apply by petition to the superior court for Barnstable county for a jury to assess the damages, and like proceedings shall be had thereon as in proceedings for

damages for laying out of railroads. Upon application to the county commissioners by either party for an estimate of damages, they shall, if requested by the owner, require the corporation to give security to their satisfaction for the payment of all damages and costs which may be awarded by them or by a jury for the land or other property taken; and if upon petition of the owner, and notice to the adverse party, the security appears to them to have become insufficient, they shall require the corporation to give further security to their satisfaction; and all its right or authority to enter upon or use the land or other property, except for making surveys, shall be suspended until it gives the security required.

We also recommend that section two of the bill be amended so as to provide for two bridges and a highway bridge, and to read as follows: —

Sect. 2. Section seven of chapter two hundred and fifty-nine of the acts of the year eighteen hundred and eighty-three is hereby amended so as to read as follows:

It shall be the duty of the Old Colony Railroad Company so to alter its location as to cross the said canal but once with each branch of its railroad, which crossings and the locations of the canal company at such crossings shall be at the points to be fixed by the board of railroad commissioners in case the railroad company and the canal company do not agree upon the same, which points of crossing said companies are hereby authorized to fix. The Cape Cod Ship Canal Company shall also build and maintain and keep in repair to the satisfaction of the board of railroad commissioners a bridge across said canal at each of said points of crossing, to be protected in such manner as the board of harbor and land commissioners shall prescribe, suitable for the passing of the railroad, which said bridges shall each have a suitable draw for the passage of vessels, and one of which shall also be suitable for the passing of the highway; and said railroad company shall appoint steady and discreet superintendents and all necessary assistants for such draw-bridges, who shall be paid by said canal company a reasonable compensa-

tion, to be fixed by the railroad commissioners. Said superintendents shall be experienced in the management of vessels, and shall have full control and direction of the passing of vessels through the draws and of trains over the bridges, and with said assistants shall be subject to such rules and regulations, not inconsistent with law, as said railroad and canal company shall from time to time prescribe for the operation of said bridges; but such rules and regulations shall be subject to approval and alteration by the said board of railroad commissioners. And said superintendents and assistants shall be subject to removal by said board of railroad commissioners. The board of railroad commissioners, after due notice to all parties interested, and hearing of all who shall appear, shall also determine and prescribe in writing the time when and the manner in which the Old Colony Railroad Company shall alter its locations so as to cross said canal at such points, and in making said alterations said railroad corporation shall have all the powers and privileges and be subject to all the duties, restrictions and liabilities set forth in all general laws relating to railroads, except that the damages of land owners shall be assessed against and paid by said canal company as in case of land taken for railroad purposes. The Cape Cod Ship Canal Company shall thereupon proceed to build the railroad upon the new location, and complete the same in such manner and at such time as may be prescribed by the railroad commissioners and to their satisfaction, in case the parties do not agree upon the same, and shall pay all damages caused by the construction of said railroad on such new locations, and shall be liable for such damages as in case of the conconstruction of railroads.

We think that, if the matter now before the railroad commissioners is to be taken from them and given to a special tribunal to be appointed as provided in section seven of the bill, that section should be amended so as to require the canal company to have the decision of the special tribunal therein provided for, upon the question of locks, before it proceeds in the construction of its canal upon its new location, and so as to read as follows: —

Sect. 7. Section two of chapter two hundred and fifty-nine of the acts of the year eighteen hundred and eighty-three is amended by adding at the end thereof the following words: "And the construction and maintenance of said canal, with the necessary breakwaters, wharves, locks, docks, and other structures, shall be subject to the supervision of the harbor and land commissioners." And it shall be protected by such locks or other structures as a board of three competent engineers to be appointed by the governor, with the advice and consent of the council, after public hearing, shall decide are necessary. The compensation of said engineers shall be fixed by the governor and council, and paid by the treasurer of the Commonwealth. Said canal company shall pay to the treasurer of the Commonwealth such sum of money as shall be necessary to pay for the services and expenses of said board of engineers. The materials excavated from the tide waters in Buzzard's Bay and Barnstable Bay shall be so disposed of, under the direction of the harbor and land commissioners, as not to interfere with the fishing interests, and the material excavated shall be deposited within the limits of the location of the canal as far as practicable, under the direction of the harbor and land commission.

And we also recommend that section eight of the bill reported by the majority be amended so as to provide that upon the acceptance of the act, the canal company shall become subject to the provisions of the general law with regard to the subscription and payment of its capital stock, and of such other general laws as can be applied to it, which are now in force in relation to railroad corporations, and so that the same shall read as follows: —

The charter, corporate existence, organization and location of said canal company are hereby recognized, ratified, and affirmed, and upon the acceptance of this act the canal company, shall for the purpose of making the new location herein provided for, become subject to the provisions of section eighty-five of chapter 112 of the Public Statutes, and shall also become subject for all purposes to the provisions of sections ninety-four to one hundred and twelve inclusive

of chapter 112 of the Public Statutes, and to all such provisions of any other general laws as can be applied to it as now are or may hereafter be in force in relation to railroad corporations.

FRANK S. STEVENS,

SIMEON BUTTERFIELD,
ZENAS E. CROWELL,
EDWARD C. ALMY.

LOCKWOOD CONTRACT.

AGREEMENT made this eighth day of October, A.D. 1883, by and between the Cape Cod Ship Canal Company, a corporation duly established under the laws of the Commonwealth of Massachusetts, party of the first part, and hereinafter called the Company, and Frederic A. Lockwood of Boston, in the county of Suffolk, in said Commonwealth, party of the second part, and hereinafter called the Contractor.

The said parties hereby agree with each other, and each with the successors, legal representatives and assigns of the other, as follows, to wit:

I.

The said company shall with all possible despatch lay out and locate a ship canal two hundred feet in width from high-water mark at Agawam Point on Buzzard's Bay, through the town of Sandwich to high-water mark on Barnstable Bay, near the mouth of Scusset River, upon a route shown upon a plan and drawings of Geo. H. Titcomb, engineer, dated September, 1883, filed with the county commissioners for the county of Barcstable, details of which route may be found in the office of said engineer; shall with all possible despatch purchase or otherwise take and acquire according to law all land and materials necessary for making or securing its canal, and for the wharves, docks, and other structures required for the convenient using of said canal, and for the highways provided for by its charter; shall seasonably make all expenditures and all deposits of money, give all such adequate security to the board of railroad commissioners or to other persons, officers or corporatious, as may be required by law or the terms of its charter, and generally shall do and perform all acts and things incumbent upon it by any general law or by the provisions of its charter, and necessary and proper to enable this contract to be fully executed.

But the said company shall not incur any liablilites whatsover to meet which the said contractor is to furnish money under this contract without having first obtained said contractor's assent in writing.

II.

The said contractor shall furnish to the said company, or shall reimburse to the said company, all moneys required or expended by it in doing the things stipulated to be done by it in article one (I.) of this contract, and shall, within four years from the twenty-sixth day of June, A.D. 1883, construct and complete said canal, with all breakwaters, bridges, basins, docks, wharves, locks, gates, highways, and other structures necessary for the convenient using of said canal, and required by the charter of said company, the necessary approaches below or outside of high water mark being alone excepted, according to the provisions of said charter and according to the specifications hereto annexed, and made part of this contract; and shall receive therefor the sum of seven and one-half millions ($7,500,000) of dollars, payable at the times, in the sums, and in the manner following, to wit: One million of dollars shall be paid for every mile of canal as constructed. At the end of each succeeding month from and after the beginning of work under this contract, the engineer of said company, George H. Titcomb, or his successor, shall ascertain and report in writing to said company the number of feet of canal constructed during said month according to this contract.

And thereupon the said company shall pay to said contractor one million of dollars for each mile of canal so constructed during such month, and at the same rate for any portion of a mile, less only ten per cent., which shall be retained by the company as security for the faithful fulfilment of the entire contract, and shall be paid to the contractor only upon such fulfilment, and the filing with said company of a certificate to that effect from the said engineer.

III.

For the purpose of meeting its payments under this contract, the said company shall from time to time, as required, issue capital stock to the full amount authorized by its charter. Said stock, as issued, shall be subscribed for by said contractor. And the amounts due from the company under the contract shall be off-set against the amounts due from said contractor on account of his subscriptions to said capital stock.

IV.

Whenever the whole capital stock of said company shall have been issued as hereinbefore provided, the said company shall, to meet further payments under said contract, issue such an amount of bonds as may be found necessary, not to exceed in any event the sum of five millions of dollars.

Such bonds shall be payable at the end of twenty years from the date thereof; shall bear interest at the rate of six per cent. per annum; shall be secured by mortgage to trustees of all its property, including the franchise of the company, and by a sinking fund, if said company shall so determine, and shall be issued in all respects conformably to the provisions of section twenty of its charter. The net proceeds of such bonds shall be applied exclusively to the payment of sums due under this contract until the same shall have been fully satisfied. If the said contractor shall purchase said bonds, or any of them, which he is hereby authorized to do, amounts due from him on account of purchase of bonds shall be off-set against amounts due to him from said company under this contract.

V.

The said contractor shall indemnify and hold harmless the said company against all injuries to persons or property occasioned by or growing out of the work to be performed under this contract, or occasioned by or growing out of any acts or defaults of himself or of his sub-contractors or employees. And in no event shall the directors of the company be or be held individually liable for the contract price herein named, or any part thereof.

VI.

If in the course of the construction of said canal it shall be found necessary to do work or furnish materials not contemplated by this contract, nor provided for in the annexed specifications, the contractor shall be at liberty to do such work or furnish such materials, and shall be entitled to receive reasonable compensation therefor.

VII.

In the event of any difference between the parties hereto as to the true meaning and effect of this contract, or growing out of anything done under it, the matter shall be referred to three arbitrators, one chosen by each party and the third selected by the

two so chosen, the decision of whom, or of a majority of whom, being made in writing, shall be final and conclusive. But the said contractor, in the event of such difference, shall not be obliged to suspend operations during such arbitration.

In witness whereof the said company hath caused these presents to be executed by its president and treasurer, and its corcorporate seal to be hereto affixed by Samuel Fessenden, its treasurer, hereunto duly authorized, and the said contractor hath hereunto set his hand and seal in duplicate, the day and year above written.

THE CAPE COD SHIP CANAL COMPANY.

By Wm. Seward, Jr.,
President. { Seal Corporate. }
And Samuel Fessenden,
Treasurer.

FREDERIC A. LOCKWOOD. [Seal.]

Executed in presence of —
SAMUEL W. McCALL.

Specifications for the Cape Cod Ship Canal Company.

Reference shall be had to the drawings at the engineer's office forming a part of the specification. The canal shall be 200 feet wide at the top and 75 feet wide at the bottom, and shall be 39,000 feet long, more or less, and shall have 23 feet of water throughout at mean low water when dredged. The work shall be under the control and supervision of George H. Titcomb, engineer-in-chief, or his assistant chief engineer, until the canal is completed.

The masonry shall be done in accordance with the plans and to the satisfaction of the engineer. Detail drawings shall be furnished to the contractor. The superstructure of the bridge shall be built so as to be acceptable to the railroad commissioners; all turnpike changes to be acceptable to the county commissioners.

Sluices shall be cut through the banks of canal, so that the creeks from the several ponds may empty in, and they shall be left open, so that the fisheries shall not be damaged, and the same shall be approved by the fish commissioners.

The railroad changes shall be made and be acceptable to the railroad commissioners.

Ferries shall be provided where the county commissioners shall direct, and shall be acceptable to said commissioners.

FREDERIC A. LOCKWOOD,

THE CAPE COD SHIP CANAL COMPANY,

By WM. SEWARD, JR.

SAMUEL FESSENDEN,
Treasurer.

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